

APPEAL NO. 030589
FILED APRIL 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 5, 2003. The hearing officer resolved the disputed issue by determining that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first compensable quarter. The appellant (carrier) appeals this decision. The claimant urges affirmance.

DECISION

Affirmed.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefits [IIBs] period computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating [IR] of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBS] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

The parties stipulated that the claimant satisfied all of the requirements for SIBs entitlement except for the direct result requirement of Section 408.142(a)(2). Consequently, the pivotal issue became whether or not the claimant's unemployment during the qualifying period in question was a direct result of the impairment from the compensable injury. Although the parties stipulated that the claimant's IR is 34%, it was noted that 30% of this rating was given for depression. The extent-of-injury issue was litigated in District Court, where it was ultimately determined that the psychological component was not part of the compensable injury. For reasons that are not clear, the carrier entered into an agreement that the IR is 34%; however, for purposes of SIBs entitlement only the compensable low back injury was to be considered in determining whether the claimant's unemployment was a direct result of the compensable injury.

The carrier asserts that the hearing officer erred by not specifically finding whether the claimant's inability to obtain employment "without [Texas Rehabilitation Commission]-sponsored retraining" was a direct result of the impairment or that claimant had to establish this inability "through qualified medical evidence based upon a reasonable degree of medical probability." We do not agree. A finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. We have repeatedly held that to meet the direct result requirement, one only need prove that the unemployment or underemployment was a direct result of the compensable injury. See Texas Workers' Compensation Commission Appeal No. 001786, decided September 13, 2000. Whether the claimant satisfied the direct result requirement for SIBs entitlement was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier argues that the hearing officer erred in considering the claimant's IR as opposed to his actual impairment from the compensable injury in making the direct result finding. We disagree. The hearing officer noted in the Statement of the Evidence that, "Leaving out any psychological aspect, [c]laimant proved inability to perform his preinjury job by reason of the physical impairment from his back injury." The carrier additionally argues that the hearing officer misplaced the burden of proof in this case on the carrier. The evidence reflects that the hearing officer stated on the record that the burden was on the claimant. Accordingly, we perceive no error on the part of the hearing officer with respect to either of these arguments.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **MID-CENTURY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**FRED WERKENTHIN
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100 CONGRESS AVENUE, SUITE 1100
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Roy L. Warren
Appeals Judge